Land and Environment Court
of New South Wales

PRACTICE NOTE

CLASS 1 RESIDENTIAL DEVELOPMENT APPEALS

Name and commencement

1. This practice note is to be known as Practice Note – Class 1 Residential Development Appeals. It commences on 3 April 2018. It replaces the Practice Note – Class 1 Residential Development Appeals made on 20 July 2017.

Application of Practice Note

2. This practice note is to be known as Practice Note – Residential Class 1 Development Appeals.

3. This practice note applies to the proceedings referred to in s 34AA of the *Land and Environment Court Act 1979*. They are the following proceedings in Class 1 of the Court's jurisdiction relating to appeals and applications under s 8.7 or s 8.9 of the *Environmental Planning and Assessment Act 1979*:

   (a) proceedings concerning development applications or modifications to development consents for:

      (i) development for the purposes of detached single dwellings and dual-occupancies (including subdivisions), or alterations or additions to such dwellings or dual-occupancies (referred to as "residential development"), or

      (ii) development of a kind prescribed by the regulations,

   (b) particular proceedings that the Court orders, on the application of a party to the proceedings or of its own motion, to be dealt with under s 34AA.

   These proceedings are referred to in this practice note as "residential development appeals".

Purpose of Practice Note

4. The purpose of this practice note is to set out the case management procedures for the just, quick and cheap resolution of residential development appeals.

Responsibility of parties, legal practitioners and agents to facilitate resolution

5. It is the responsibility of each party and their legal practitioners and agents (as applicable) to consider the orders and directions appropriate to be made in the particular case to facilitate the just, quick and cheap resolution of the real issues in the proceedings.

6. If any party reasonably considers that compliance with this practice note will not be possible, or will not be conducive to the just, quick and cheap resolution of the proceedings, the party should apply to be relieved from compliance on the basis that an alternative proposed regime will be more conducive to such resolution. In that event, the party is to notify other parties of the proposed alternative regime as soon as practicable and is to make available to the Court short minutes reflecting that alternative regime.

7. Parties are to ensure that all directions which they seek with respect to residential development appeals will assist in enabling such appeals to be dealt with at any hearing with as little formality and technicality, and with as much expedition, as the requirements of the Land and Environment Court Act and of every other relevant enactment and as the proper consideration of the matters before the Court permits (see s 38 of the Land and Environment Court Act).

Legal practitioners and agents of parties to be prepared

8. Each party not appearing in person shall be represented before the Court by a legal practitioner (or an agent authorised by the party in writing to whom leave

of the Court has been granted to appear for the party) familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.

9. Any person seeking to perform the role of an agent should make themselves aware of the obligations of an agent and the requirement to obtain the leave of the Court to appear on someone's behalf in the proceedings. An application for leave to appear as an agent in the proceedings may be made at the time of commencing the proceedings by letter to the Registrar, or orally at the first directions hearing. The application must be supported by evidence that rule 7.7 of the *Land and Environment Court Rules 2007* has been complied with.

   Note: More information regarding the obligations of agents in development appeals can be found on the Court's website (http://www.lec.justice.nsw.gov.au) and then accessed through "Coming to the Court" and then "Having someone represent you."

10. Legal practitioners and agents for each party should communicate prior to any attendance before the Court with a view to reaching agreement on directions to propose to the Court and on preparation of short minutes recording the directions.

Commencing a residential development appeal

11. A residential development appeal is to be commenced by filing in the Registry of the Court, by mail, over the counter or through the NSW Online Registry, a completed Class 1 Application Form (Form B).

    Note: the application form for residential development appeals can be found on the Court's website (http://www.lec.justice.nsw.gov.au) and then accessed through "Forms & Fees" on the right hand menu.

12. Any plans of any residential development accompanying the residential development appeal application are to satisfy the requirements in **Schedule A**. If leave is granted by the Court to amend the plans, any amended plans are also to meet those requirements.

13. If the plans the subject of the determination of a consent authority in respect of which a residential development appeal application is to be made do not

satisfy the requirements in Schedule A, the applicant, before lodging the residential development appeal application, may amend the plans without seeking leave of the Court, but only to the extent necessary to cause the plans to satisfy the requirements in Schedule A. Any other amendment is to be by leave of the Court.

Service of the residential development appeal application

14. Residential development appeal applications are to be served within 3 working days of filing.

The return of the residential development appeal application before the court

15. Residential development appeal applications will usually be given a return date before the Court 21 days after the date on which they are filed. On the return, the first directions hearing will occur. The first directions hearing will usually be before the Registrar.

16. Applications to extend the period for the return of the application before the Court may be granted if the applicant demonstrates that service cannot be achieved within the time required. The Registrar may also extend the period if circumstances, such as public holidays, make it appropriate that a longer period be allowed for parties to take the action required by this practice note before or by the return of the proceedings.

Access to documents

17. On request, a respondent who is a public authority or public official is to provide the applicant with access to the documents relevant to the residential development application and its decision (if any), within 7 days of the request.

Identifying the issues in dispute

18. The respondent consent authority is to file in the Court and serve on the applicant a statement of facts and contentions in accordance with **Schedule**

B before 4.00pm on the second last working day before the first directions hearing unless the proceedings involve an appeal against a determination to grant consent subject to conditions.

19. If the proceedings involve an appeal against a determination to grant development consent for residential development subject to conditions, then the applicant is to file in the Court and serve on the consent authority a statement of facts and contentions in accordance with **Schedule C** with its residential development appeal application.

Number of pre-hearing attendances

20. Normally, there will be only one directions hearing in residential development appeals before the conciliation conference and hearing.

Before the first directions hearing

21. Before the first directions hearing, the parties are to discuss and endeavour to agree upon:

    (a) the directions that the Court should make at the directions hearing;

    (b) the proposed dates for the conciliation conference and hearing, being usually the dates in the range of available dates published at the top of the court list; and

    (c) if any party intends to adduce expert evidence at a hearing of the proceedings, a statement of the disciplines in respect of which they propose to call expert evidence, the names of the experts, the issues to which the proposed expert evidence relates, and the reasons why the proposed expert evidence is reasonably required to resolve the proceedings having regard to the requirement for the just, quick and cheap resolution of the issues in dispute.

22. If the parties do not agree, each party should prepare their own written version of the directions they propose.

Parties to seek directions before adducing expert evidence

23. Parties are encouraged to consider whether expert evidence is genuinely necessary to resolve the issues in dispute in residential development appeals. Unnecessary expert evidence substantially increases the time and cost of appeals. Parties are encouraged to consider whether the proceedings can appropriately be fixed for hearing before a Commissioner or Commissioners with special knowledge and experience in relation to the issues in dispute.

24. A party intending to adduce expert evidence at the hearing of any residential development appeal must apply for directions from the Court under Pt 31 r 31.19 of the Uniform Civil Procedure Rules 2005 permitting the adducing of expert evidence.

25. The application for directions is to be made at the first directions hearing. The application is to be supported by a completed information sheet in the form of **Schedule D**, outlining the issues in the proceedings, the experts whose opinion is sought to be adduced as evidence in the proceedings, and the areas of expertise of each expert. The application is also to be accompanied by the proposed directions under r 31.20 of the Uniform Civil Procedure Rules 2005.

26. If practicable, the Court will determine the application for directions at the first directions hearing or otherwise it will fix a date for hearing the application. At the hearing of the application for directions, the party seeking directions is to explain the expert evidence sought to be adduced and why the use of that expert evidence should be permitted, including why that expert evidence relates to a real issue in the proceedings and is reasonably required to resolve that issue.

27. A party may not adduce expert evidence at the hearing of any residential development appeal unless the Court has given directions permitting the adducing of that expert evidence and the adducing of that expert evidence is in accordance with those directions (see r 31.19(3) of the Uniform Civil Procedure Rules 2005).

28. Any directions for the filing of experts' reports and joint expert reports made by the Court will specify the name of each expert required to comply with the directions.

29. If either party seeks to adduce the evidence of any expert not named in the directions made, that party is required to seek additional directions for the filing of evidence by that expert, either through Online Court or by exercising liberty to restore. Any application for additional directions is to be supported by an updated hearing information sheet in the form of Schedule D and provide the information and explanation referred to in paragraphs 25 and 26 of this practice note.

At the first directions hearing

30. Unless good reason is demonstrated, each party is to be sufficiently prepared at the first directions hearing to assist the Court in making and to accept a timetable up to and including the date of the conciliation conference and hearing. Legal practitioners and other representatives of the parties are to ensure they advise the parties of their obligation to be ready to agree to a timetable up to and including that date and are to obtain full and timely instructions to ensure the parties comply with this obligation.

31. To assist the Court in making the appropriate directions, each party is to complete and hand to the Court at the first directions hearing a completed information sheet in the form of **Schedule D**.

32. At the first direction hearing, the parties should expect that the usual directions set out in **Schedule E** will be made to prepare for the conciliation conference and hearing of the residential development appeal, and should have either agreed or competing proposed short minutes to hand to the Court.

33. In preparing the short minutes, parties may delete, amend or abridge any part of the usual directions to facilitate the just, quick and cheap resolution of the proceedings.

34. Parties may also propose alternative directions if they have a reasonable basis for considering that alternative directions will better facilitate the just, quick and cheap resolution of the proceedings. If alternative directions are proposed, the party seeking those directions is to notify the other party before the first directions hearing and ensure that proposed short minutes are available to be handed to the Court.

35. At the first directions hearing, the residential development appeal will be fixed for the conciliation conference and hearing under s 34AA of the Land and Environment Court Act. This conciliation conference and hearing will usually be not later than 6 weeks after the first directions hearing.

36. Estimates of the length of time needed for the conciliation conference and hearing should be realistic having regard to the statements of facts and contentions.

37. Generally, the conciliation conference and hearing should commence at 9.30am on the site of the residential development unless, in the particular circumstances of the case, it would be inappropriate to do so. The parties are to inform the Court at the first directions hearing whether there is any reason for not holding the conciliation conference and hearing at the site of the residential development.

Use of Online Court

38. Online Court allows parties to seek directions online rather than appearing at a directions hearing in court. Any of the usual directions, including fixing a date for the conciliation conference and hearing, and the making of directions for expert evidence, can be made through Online Court.

39. Any application by Online Court to adduce expert evidence must be supported by a completed hearing information sheet (Schedule D) as well as the information and explanation referred to in paragraphs 25 and 26 of this practice note.

40. Parties can apply for directions to be made online by submitting an Online Court request before 12noon on the day prior to the directions hearing. The Court will endeavour to respond to the request by 4:30pm. If the parties do not receive a response there must be an appearance on their behalf at the directions hearing.

41. Any party seeking to make an application using Online Court must first contact the other parties in an attempt to provide the Court with a consent position. If the parties reach consent as to the appropriate directions to be made and the date for the conciliation conference and hearing, the party lodging the request may mention the appearance of the other party and indicate that the directions are sought by consent.

42. If a party makes a request for orders through the Online Court without the consent of the other side, the Online Court system gives the other party an opportunity to respond by either consenting to the request or offering a 'counter' request. The other party is required to respond to the request by 2pm. If no response is received, appearances are required on behalf of all parties at the directions hearing.

43. If, by reason of a party's failure to respond to an Online Court request, another party is unnecessarily put to the cost of attending a directions hearing, the Court may make a costs order against that party for the cost of the other party's appearance in court unless there is some reasonable excuse for the failure to respond.

Conduct of conciliation conference and hearing pursuant to s 34AA

44. Subject to any alternative arrangement made at the first directions hearing, residential development appeals should commence at 9.30am on site.

45. The conciliation phase of the conciliation conference and hearing process will be conducted in accordance with the Conciliation Conference Policy.

Note: the Conciliation Conference Policy can be found on the Court's website (http://www.lec.justice.nsw.gov.au) and then accessed through "Practice and Procedure" on the top menu.

46. The parties are to participate, in good faith, in the conciliation conference (see s 34(1A) of the *Land and Environment Court Act 1979*), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference.

47. Any amended plans or additional information proposed by the applicant to be the subject of without prejudice discussions at the conciliation conference are to be provided to the respondent 14 days before the conciliation conference.

48. The respondent is to provide to the applicant any response to the amended plans or additional information 7 days before the conciliation conference.

49. The conciliation conference and hearing process will only be adjourned where the parties have reached an agreement in principle as to the terms of a decision in the proceedings that would be acceptable to the parties under s 34(3) of the Land and Environment Court Act and the adjournment is required to finalise that agreement.

50. If an adjournment is given, the conciliation may be listed before the Commissioner after 4pm on a future date not more than 3 weeks after the conciliation conference. The Commissioner may conduct the adjourned conciliation by telephone or by requiring the parties to attend in person. If the time or date of the listing changes due to other duties of the Commissioner, the parties will be notified in writing by email.

51. If no agreement of a kind referred to in s 34(3) of the Land and Environment Court Act is reached, the conciliation conference will be terminated and the residential development appeal will proceed to a hearing forthwith or, with the consent of the parties, on the basis of what occurred in the conciliation (see s 34AA(2)(b) of the Land and Environment Court Act). There will be no adjournment between the termination of the conciliation conference and the commencement of the hearing.

Applications to opt out or opt in to the residential development appeal regime

52. If a party seeks to make an application pursuant to s 34AA(3) of the Land and Environment Court Act that the particular residential development appeal not be dealt with or not continue to be dealt with under s 34AA(2), the party should apply by notice of motion supported by an affidavit setting out the reasons why that course is appropriate in the circumstances of the case. The notice of motion is to be made returnable on the date of the first directions hearing.

53. If a party seeks to make an application pursuant to s 34AA(1)(b) of the Land and Environment Court Act for a particular proceeding that is not a residential development appeal be dealt with under s 34AA, the party should apply by notice of motion supported by an affidavit setting out the reasons why that course is appropriate in the circumstances of the case. The notice of motion is to be made returnable on the date of the first directions hearing.

Target time for finalisation of residential development appeals

54. Residential development appeals are intended to be dealt with expeditiously. The Court sets a target of finalising 95% of residential development appeals within 3 months of filing.

Expert evidence

55. Any directions made concerning the filing of expert evidence must be provided to the experts within 3 business days of being made, together with the statements of facts and contentions, Division 2 of Pt 31 of the Uniform Civil Procedure Rules, the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, and the Court policies on Joint Reports and on Conference of Expert Witnesses.

56. An expert (including a parties' single expert) and the expert's report are to comply with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules.

57. An expert witness should identify any pre-existing relationship between the expert witness, or their firm or company, and a party to the litigation.

58. It is not the role of any expert to opine whether a residential development appeal should be upheld or dismissed. That is the role of the consent authority and, on appeal, the Court exercising the functions of the consent authority. Expert opinions in reports and joint reports are to deal with the contentions raised by the parties. Any other matter relevant to the expert's expertise, which the expert feels obliged to draw to the attention of the parties and the Court, may also be noted.

59. Experts' reports are not to repeat matters in Part A Facts of the statements of facts and contentions. Wherever possible, an expert should state that Part A Facts has been adopted as correct. If this cannot be stated, the expert should identify the matters which are disputed and state his or her position in relation to those matters.

60. If experts are directed by the Court to confer, experts are to ensure that their joint conference is a genuine dialogue between experts in a common effort to reach agreement with the other expert witness about the relevant facts and issues. Any joint report is to be a product of this genuine dialogue and is not to be a mere summary or compilation of the pre-existing positions of the experts.

61. Legal representatives are not to attend joint conferences of experts or be involved in the preparation of joint reports without the leave of the Court.

62. Where expert evidence from more than one expert in the same discipline is to be given in Court, the experts will give such evidence concurrently (subject to any order by the hearing Commissioner to the contrary).

63. If a party requires any expert for cross-examination, notice is to be given at least 7 days before the conciliation conference and hearing.

Parties' single expert

64. Where expert evidence is necessary to be called in relation to an issue, the Court encourages parties to use a parties' single expert. The use of a parties'

single expert in an appropriate case can reduce costs and ensure the Court has the benefit of evidence from a person who is not engaged by only one party. In determining whether a parties' single expert might be appropriate in a particular case, consideration should be given to:

(a) the importance and complexity of the subject matter in dispute in the proceedings;

(b) the likely cost of obtaining expert evidence from a parties' single expert compared to the alternative of obtaining expert evidence from individual experts engaged by each of the parties;

(c) the proportionality of the cost in (b) to the importance and complexity of the subject matter in (a);

(d) whether the use of a parties' single expert in relation to an issue is reasonably likely either to narrow the scope of the issue or resolve the issue;

(e) the nature of the issue, including:

(i) whether the issue is capable of being answered in an objectively verifiable manner;

(ii) whether the issue involves the application of accepted criteria (such as Australian Standards) to ascertainable facts;

(iii) whether the issue is likely to involve a genuine division of expert opinion on methodology, or schools of thought in the discipline; and

(iv) whether the issue relates to the adequacy or sufficiency of information provided in the residential development appeal application;

(f) whether the evidence of the parties' single expert involves the provision of aids to assist in the assessment of a residential development appeal application (such as shadow diagrams, view lines or photo montages).

(g) whether the parties' single expert would be required independently to obtain further information or to undertake monitoring, surveys or other means of obtaining data before being able to provide expert evidence;

(h) whether the parties are prepared at the time to proceed to hearing on the basis of a parties' single expert report about the issue and no other expert evidence about that issue;

(i) whether the integrity of expert evidence on the issue is likely to be enhanced by evidence being provided by a parties' single expert instead of by individual experts engaged by the parties; and

(j) whether the Court is likely to be better assisted by expert evidence on the issue being provided by a parties' single expert instead of by individual experts engaged by the parties.

65. The Court will not usually accept the appointment of a parties' single expert if that expert is unable to provide a report within 4 weeks of receiving the brief or is unable to attend the conciliation conference and hearing.

66. The usual directions in **Schedule F** provide for a parties' single expert to file and serve one expert report only. Without leave of the Court, a parties' single expert is not to provide parties with preliminary reports or opinions.

Note: Under Pt 31.41 of the Uniform Civil Procedure Rules a party may seek clarification of the report of a parties' single expert on one occasion only.

67. The parties' are not to provide a parties' single expert with any expert report brought into existence for the purpose of the proceedings addressing any matter the subject of instructions to the parties' single expert, without leave of the Court.

68. Where a parties' single expert has been appointed to give evidence in relation to any issue, the parties may not rely on any other expert evidence about that issue without leave. Any application for leave is to be made as soon as reasonably possible and usually no later than five days after receiving the report of the parties' single expert.

69. Leave is to be sought by notice of motion, with an affidavit in support explaining:

(a) the name, qualifications and expertise of the expert proposed to be called;

(b) the matters proposed to be addressed by the expert;

(c) the date on which the expert was first retained and the date or dates of any expert report the expert has already prepared;

(d) the reasons for the need to call an additional expert to give that evidence, rather than having the parties' single expert address the matters further or in cross examination;

(e) how calling the additional expert at all, or at the particular stage in the preparation of the proceedings, promotes the just, quick and cheap resolution of the proceedings; and

(f) the party's position in relation to any additional costs that might be caused by the calling of the expert.

If practicable, the affidavit should not exceed three pages in length (excluding annexures).

70. It is the responsibility of the parties to agree the remuneration to be paid to a parties' single expert. This includes making provision with respect to the amount of the expert's fees and the frequency with which the expert renders accounts. The Court will fix the remuneration of a parties' single expert only where the parties are unable to agree that remuneration.

Note: See Pt 31.45 of the Uniform Civil Procedure Rules.

Application for separate determination of an issue

71. In the ordinary course, all issues in a residential development appeal should be heard together unless an issue genuinely capable of separate determination is likely to be determinative of the residential development appeal.

72. If any party seeks to raise an issue of fact or law that the party contends precludes or demands the determination of the residential development application in a particular way or otherwise seeks to have an issue dealt with

separately before the final hearing, the party must apply to do so by notice of motion supported by a short affidavit setting out the issue and the reasons why it should be dealt with separately.

73. The notice of motion is to be returnable at the first directions hearing. The Court will deal with the notice of motion on the day of the first directions hearing or at a separate hearing shortly after the first directions hearing. However, the Court at the first directions hearing may still fix a date for the final hearing of the residential development appeal.

74. If an order is made for a separate hearing:

    (a) short matters (less than 2 hours) may be listed on the first available Friday before the Duty Judge or Duty Commissioner for issues of law or fact respectively; and

    (b) other matters will be listed for hearing in the ordinary course,

    and the usual directions in **Schedule G** will apply.

Expedition

75. Any party may seek expedition of a residential development application appeal by notice of motion, with a short affidavit in support setting out the reasons in support of expedition.

Breach of the Court's directions

76. If any party fails to comply with a direction of the Court that some action be taken by a specified time, and the defaulting party is not able to take that action within two days of the specified time, the defaulting party is to:

    (a) relist the matter before the Court within three days of the specified time; and

    (b) provide to the Court on the relisting an affidavit explaining the non-compliance, the reason for the non-compliance and what action the party proposes to take and when the party proposes to take action to comply with the direction.

77. If any party fails to comply with a direction of the Court or this practice note, the Court will usually order that the defaulting party pay the costs of the other party of and occasioned by the non-compliance and any relisting required unless it appears to the Court that some other order should be made as to the whole or any part of the costs.

Variation of timetables

78. If either party becomes aware of circumstances that will necessitate a variation to the timetable, an application to vary the timetable can be made by Online Court request. Any party seeking to make an application to vary the timetable using Online Court must first contact the other parties in an attempt to provide the Court with a consent position.

79. If a party makes a request for orders through the Online Court without the consent of the other side, the Online Court system gives the other party an opportunity to respond by either consenting to the request or offering a 'counter' request. If no response is received within 2 days of the request or such other time as the Registrar determines, the proceedings may be listed for further directions.

80. If, by reason of a party's failure to respond to an Online Court request, another party is unnecessarily put to the cost of attending a directions hearing, an order for the payment of costs of the appearance may be made unless there is some reasonable excuse for the failure to respond.

81. If proposed directions vary an existing timetable, they must include the vacation of any date for a directions hearings or mention or for the hearing of motions that can no longer be maintained.

Liberty to restore

82. Parties have liberty to approach the Court without a notice of motion on two working days' notice or earlier if urgency requires. A party seeking to make urgent application should, if possible, make prior arrangement with, or give

appropriate notice to, any other party, and should send an Online Court request.

Amendments to applications and to statements of facts and contentions

83. Subject to paragraph 13 of this practice note, an applicant requires leave of the Court to amend its residential development appeal application, including to amend the plans for the residential development proposed in the application. Applicants should ensure, before commencing their residential development appeal, that their residential development appeal application, and the residential development proposed in the application, is considered, complete and final and suitable for assessment at the final hearing including ensuring that the plans satisfy the requirements in Schedule A.

84. If an applicant wishes to amend its residential development appeal application, including by amending plans, the applicant is to apply for leave as soon as reasonably possible and usually no later than 3 working days after the facts and circumstances which prompted the application for leave came to the attention of the applicant. Examples of such facts or circumstances are the receipt of a report of a parties' single expert or a joint report of parties' experts recommending modification of the proposed development, which recommendation the applicant wishes to adopt in whole or part.

85. Other than amendments sought during the hearing of the residential development appeal, leave to rely on an amended residential development appeal application, including amended plans, is to be sought by notice of motion, accompanied by a short affidavit in support that:

    (a) provides particulars sufficient to indicate the precise nature of the amendments proposed;

    (b) identifies any amended plans by date and plan revision number;

    (c) identifies the facts or circumstances which prompted the application for leave and when they came to the attention of the applicant;

(d) identifies the respects in which the amendments lessen the environmental impact of the development and/or otherwise lead to an improved community outcome;

(e) identifies why granting leave to amend the application would promote the just, quick and cheap resolution of the proceedings;

(f) discloses if any additional documents (eg a BASIX certificate for the amended development) are required to support the amended application and, if so whether those documents have been, or are to be, obtained;

(g) discloses the applicant's position on any additional costs that the consent authority may incur as a consequence of the amendment; and

(h) identifies the potential impacts on the hearing dates and the applicant's position on the adjustments to the timetable that would enable the hearing dates to be maintained if possible.

If practicable, the affidavit should not exceed 3 pages in length (excluding annexures).

86. Leave will usually not be given to amendments where to do so would require either the vacation of the conciliation conference and hearing (for applications to amend made prior to a hearing which has been fixed) or the adjournment of the conciliation conference and hearing (for applications to amend made during the hearing). An alternative course that should be considered by an applicant is for the residential development the subject of the application to be amended by means of conditions of development consent or approval if the Court considers the grant of such development consent or approval is appropriate.

87. Parties require leave of the Court to amend their statement of facts and contentions. Leave to do so consequential on an amended residential development appeal application may be assumed where leave to amend an application has been granted and will be subject to directions made at that time. In all other cases, leave is to be sought by notice of motion accompanied by a short affidavit in support explaining the reasons for leave being sought.

Applications to change hearing dates and for adjournments

88. Residential development appeals will not be adjourned generally. In particular, applicants should usually be ready to proceed with their residential development appeal when it is commenced. This requires applicants to ensure that their residential development appeal application, and the residential development proposed in the application, is considered, complete and final, and suitable for assessment at the final hearing.

89. Proceedings usually will not be adjourned because of failure to comply with this practice note or Court directions or because of lack of preparedness for any attendance before the Court. If failure to comply or lack of preparedness nevertheless does cause the adjournment of the proceedings, the defaulting parties or legal practitioners may be ordered to pay costs.

90. Applications to change hearing dates fixed by the Court are to be by notice of motion, with an affidavit in support explaining the circumstances of the application and the reasons the hearing dates should be changed.

Applications for final orders by consent of parties

91. If the parties settle the dispute the subject of the residential development appeal and its resolution does not require the Court to make any orders, the applicant is to file a notice of discontinuance of the residential development appeal signed by all parties.

92. When there is agreement prior to the commencement of the conciliation conference and hearing of a residential development appeal involving a deemed refusal of the residential development application by the consent authority, the Court will usually expect the consent authority to give effect to the agreement by itself granting consent or approval. The applicant can then file a notice of discontinuance signed by all parties.

93. If the parties settle the dispute and its resolution does require the Court to make orders, it will be necessary for the Court to determine the residential development appeal rather than filing terms of agreement with the Court registry. The parties are to exercise the liberty to restore the proceedings

before the Court and request that the application for final orders by consent be listed for determination by the Court.

94. The parties are to file the proposed consent orders signed by all parties before the date fixed for hearing the application for final orders by consent.

95. At the hearing, the parties will be required to present such evidence as is necessary to allow the Court to determine whether it is lawful and appropriate to grant the consent or approval having regard to the whole of the relevant circumstances, including the proposed conditions. The consent authority will be required to demonstrate that relevant statutory provisions have been complied with and that any objection by any person has been properly taken into account. Additionally, the consent authority will be required to demonstrate that it has given reasonable notice to all persons who objected to the proposal of the following:

    (i) the content of the proposed orders (including the proposed conditions of consent);

    (ii) the date of the hearing by the Court to consider making the proposed consent orders; and

    (iii) the opportunity for any such person to be heard,

    or that, in the circumstances of the case, notification is not necessary.

Application for an easement under s 40 of the Land and Environment Court Act

96. An application for an order under s 40 of the Land and Environment Court Act can only be made if:

    (a) the Court has determined to grant or modify development consent pursuant to proceedings on an appeal under the *Environmental Planning and Assessment Act 1979*; or

    (b) proceedings on an appeal under the *Environmental Planning and Assessment Act 1979* with respect to the granting or modification of a development consent are pending before the Court.

97. It is inappropriate for parties to seek an order under s 40 of the Land and Environment Court Act at the hearing of an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979*.

98. An application for an order under s 40 of the Land and Environment Court Act is to be made in Class 3 of the Court's jurisdiction and is subject to *Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals*.

Costs and compliance

99. If a breach of the Court's directions or of this practice note causes costs to be thrown away, a party or legal practitioner responsible for the breach may be ordered to pay those costs.

100. The cost of unnecessary photocopying and assembly of documents is unacceptable. Legal practitioners for the parties are to consider carefully the documents necessary to be tendered. Unnecessary documents may attract adverse costs orders.

101. Any failure by one party to comply with the Court's directions will not be considered an adequate excuse for any failure to comply by the other party. Both parties are responsible for ensuring that they comply with directions.

Applications for a cost order

102. Where a Commissioner has heard and determined a residential development appeal, any party seeking an order for costs of the proceedings must apply for costs by notice of motion filed within 28 days of the making of the final orders in the proceedings.

Note: Pt 3 r 3.7 of the Land and Environment Court Rules 2007 provides that for proceedings in Class 1 of the Court's jurisdiction, including residential development appeals, the Court "is not to make an order of the payment of costs unless the Court considers that the making of an order as to the whole or any part of the costs is fair and reasonable in the circumstances": Pt 3 r 3.7(2). Some of the circumstances in which the Court might consider the making of a costs order to be fair and reasonable are listed in Pt 3 r 3.7(3).

103. The notice of motion for costs will be heard and determined by either the Registrar or a Judge of the Court.

The Honourable Justice Brian J Preston
Chief Judge

29 March 2018

Schedule A

Requirements for Plans

1. **General**:

- Plans should be drawn to an appropriate scale shown on the drawings;
- Plans should be drawn with clarity;
- Plans should indicate a north point; and
- All plans shall be consistent with each other.

2. **Survey plans are to indicate**:

- Existing buildings, structures and features of the site;
- Topography (spot levels, contours) including that of adjoining property where relevant;
- Natural drainage of the site;
- Any easements or rights of way;
- Significant existing vegetation, indicating its location on the site, type and spread;
- Location, height and use of any adjoining buildings or structures such as swimming pools; and
- Features of streets immediately adjoining or within the property, including poles, kerbs, crossings and pits.

3. **Site plans are to identify the location of the following**:

- Proposed and existing buildings;
- Existing significant trees, indicating whether they will be retained or removed;
- Paved areas;
- Landscaped areas;
- Driveway entry and/or exit;
- Garbage storage areas;
- On-site detention tanks;
- Letterboxes;
- Private open spaces; and
- Where privacy is an issue in the proceedings, the location of windows of the adjoining property and the subject proposal.

4. **Floor plans are to indicate**:

- Room names, area and dimensions;
- The location of windows and doors;
- The levels of floors, terraces and the like to Australian Height Datum (AHD);
- Wall construction; and
- Spot levels of natural ground to AHD.

5. **Elevations are to indicate**:

- Elevations of all sides of the building or structure;
- Outline of existing buildings;
- Materials and finishes to be used in construction;
- Location of adjoining buildings showing address, height, setbacks and other relevant features;
- Proposed window size, sill height and location; and
- Height of eaves, ridge and floor levels to AHD.

6. **Sections are to indicate**:

- Appropriate number and location;
- Section line and location on plan;
- Room names;
- Adequate representation of ground level;
- Areas of cut and/or fill; and
- Height of levels to AHD.

7. **Landscape plans are to**:

- Be consistent with other plans tendered to the court with respect to the height, size and location of buildings;
- Indicate the location, species, height and spread of significant existing trees, indicating whether they will be retained or removed;
- Indicate the location of any additional planting to be carried out including species names, spread, height and other features;
- Indicate the location of significant retaining walls or other structures; and
- Indicate finished relative levels of all major surfaces.

8. **Overshadowing plans are to**:

- Be based on true north;
- Indicate the location and nature of existing and/or proposed fencing, with the shadows projected;
- Indicate horizontal and vertical impact, including any impact from any substantial wall;
- Provide a table of compliance and non-compliance with known criteria (such as a development control plan, a State environmental planning policy or Australian Model Code for Residential Development (AMCORD)); and
- Make appropriate allowance for the topography.

Schedule B

Requirements for statement of facts and contentions by respondent consent authority

1. The statement is to be as brief as reasonably possible.

2. The statement is to be divided into two parts – Part A Facts and Part B Contentions

3. An authorised officer of the respondent consent authority is to sign and date the statement.

Part A Facts

4. In Part A Facts, the respondent consent authority is to:

   (a) **The application**: identify the application for development consent or approval by application number and date of lodgment.

   (b) **The site**: identify the site by street address and lot and deposited plan, and describe the site including lot dimensions, site area, topographic features, existing vegetation and existing improvements on the site.

   (c) **The proposal**: - briefly describe the proposed development or modification.

   (d) **The locality**: briefly describe the locality including the type and scale of existing surrounding development.

   (e) **The statutory controls**: identify the relevant provisions of the applicable statutory instruments (State environmental planning policies, local environmental plans and development control plans) and any draft statutory instruments, the zoning of the site and any other applicable designation (such as foreshore scenic protection area or heritage conservation area).

(f) **Compliance with statutory controls**: briefly describe (if appropriate, in tabular form) the extent of compliance of the proposal with the relevant statutory controls.

(g) **Actions of the respondent consent authority**: provide details of any notification process and its results, details of any consultation and its results, the decision of the respondent and the reasons for refusal.

5. Part A Facts is not to include matters of opinion.

Part B Contentions

6. In Part B Contentions, the respondent consent authority is to identify each fact, matter and circumstance that the respondent contends require or should cause the Court, in exercising the functions of the consent authority, to refuse the application or impose certain conditions.

7. In Part B Contentions, the respondent consent authority is to:

(a) focus on issues genuinely in dispute;

(b) have a reasonable basis for each contention;

(c) identify the nature of each contention with an appropriate short heading; and

(d) present its contentions clearly, simply and without repetition and not by way of submission.

8. Part B Contentions should be divided into three parts:

(a) B1 – Contentions that the application be refused

(b) B2 – Contentions that may be resolved by conditions of consent

(c) B3 – Contentions that there is insufficient information to assess the application.

B1 - Contentions that the application be refused

9. Part B1 is to identify those contentions which the respondent contends either must result or ought result in the Court refusing consent or approval to the application.

10. If the respondent contends that the application must be refused, it is to identify the factual and/ or legal basis for that contention. An example of such a contention is that the proposal is prohibited or that a jurisdictional pre-condition to the grant of consent or approval has not been satisfied. Any such contention is to be made at the beginning of Part B1 and is to be clearly identified as a contention that the application must be refused.

11. If the respondent contends that the application ought to be refused, it is to identify each ground on which the respondent so contends.

12. For each contention, the respondent should identify the contention with a short heading, identify the relevant statutory controls and give particulars.

The contention heading

13. Each contention is to commence by identifying the nature of the issue in a word or two and be succinct. For example, if an issue is the height of a proposed building, the contention should identify the issue as "Height" and not by reference to a planning control or planning instrument that identifies a height requirement.

14. Contentions should be identified specifically and not generically. For example, it is not sufficient to identify a contention that the application ought to be refused in the "public interest" or the "circumstances of the case". Rather the particular aspect or aspects of the public interest or the particular circumstances of the case which warrant refusal need to be identified. Similarly, it is not acceptable to identify as a ground for refusal "matters raised by the objectors". The respondent consent authority is to identify which, if any, of the matters raised by the objectors the respondent itself contends, on a reasonable basis, justifies the refusal of the application.

The statutory controls

15. Where the respondent contends that a proposal does not comply with statutory controls, including development standards, of an environmental planning instrument or a development control plan, such as density, floor space ratio, setbacks and height, it is to identify those controls by reference to the specific clause and subclause.

16. Where the respondent contends that a proposal is inconsistent with any objective of a statutory instrument, it must identify the specific objective.

17. Given the often overlapping nature of statutory controls, different development standards or controls and objectives from different statutory instruments may apply to the same contention.

Particulars

18. The respondent is to provide details of the extent of any non-compliance with the statutory controls or any inconsistency with any objective to enable the applicant to respond properly to the contention. Any particulars should be brief and not take the form of evidence or submissions. The extent of the non-compliance with the provisions of an environmental planning instrument may be shown in diagrammatic or tabular form.

B2 - Contentions that may be resolved by conditions of consent

19. Part B2 is to identify those contentions that, in the opinion of the respondent consent authority, can be addressed through the imposition of a condition of consent or approval. The respondent is to identify the contention and provide details of those matters required to satisfy the contention or alternatively provide the specific wording of a condition that would satisfy the contention.

B3 - Contentions that there is insufficient information to assess the application

20. Part B3 is to identify those matters that, in the opinion of the respondent consent authority, cannot properly be considered because of absence of

information submitted with the application. The respondent is to identify the information it contends should be provided by the applicant to permit the Court to assess the application properly.

Schedule C

Requirements for statement of facts and contentions by applicant

1. The statement is to be as brief as reasonably possible.

2. The statement is to be divided into two parts – Part A Facts and Part B Contentions

3. An applicant or its authorised officer is to sign and date the statement.

Part A Facts

4. In Part A Facts, the applicant is to:

   (a) **The development consent**: identify the relevant development consent or approval, including the application number, the date of the application and the date of determination;

   (b) **The challenged conditions or aspects of the consent**: identify the particular conditions or aspects of the development consent or approval with which applicant is dissatisfied;

   (c) **The proposal**: briefly describe the proposed development or modification;

   (d) **The site**: identify the site by street address and lot and deposited plan, and describe the site including lot dimensions, site area, topographic features, existing vegetation and existing improvements on the site;

   (e) **The locality**: briefly describe the locality including the type and scale of existing surrounding development;

   (f) **The statutory controls**: identify the relevant provisions of the applicable statutory instruments (State environmental planning policies, local environmental plans and development control plans) and any draft statutory instruments, the zoning of the site and any other applicable designation (such as foreshore scenic protection area or heritage conservation area); and

(g) **Actions of the respondent consent authority**: provide details of any notification process and its results, details of any consultation and its results, the decision of the respondent and the reasons for refusal.

5. Part A Facts is not to include matters of opinion.

Part B Contentions

6. In Part B Contentions, the applicant is to identify:

   (a) each condition of the development consent or approval that the applicant contends should be deleted and the reason for seeking deletion;

   (b) each condition of the development consent or approval that the applicant contends should be amended and, for each such condition, the terms of the amendment sought and the reason for seeking the amendment; and

   (c) any other aspect of the development consent or approval with which the applicant is dissatisfied, the manner in which the applicant contends that aspect should be addressed or changed, and the reason for each such change.

7. In Part B Contentions, an applicant is to:

   (a) focus on issues genuinely in dispute;

   (b) have a reasonable basis for the contentions; and

   (c) present contentions clearly, succinctly and without repetition and not be way of submission.

Schedule D

Class 1 Residential Development Appeals – Hearing Information Sheet

Applicant:	
Respondent(s):	
Proceedings no:	

1.	Is any expert evidence required? If so, nominate general issues on which expert evidence is required, the areas of expertise and the names of the experts whose evidence leave is sought to be relied upon (with a new line for each area of expertise)

Issues	Area of expertise	Applicant Expert	Respondent Expert

2.	Could any of the above issues be better dealt with by a parties' single expert? If so, what is the proposal for engaging the expert?
3.	Are there any experts who should prepare an individual report before proceeding to a joint conference and joint report and, if so, identify the expert, the area of expertise and provide

	reasons supporting the report being necessary or appropriate [point form only]?
4.	Should a Commissioner or Commissioners with special knowledge and experience in particular disciplines hear the residential development appeal? If so, specify the relevant disciplines.
5.	If the appeal concerns land outside of the Sydney metropolitan region, should the residential development appeal be heard in the local area? If not, why not?
6.	Is it appropriate to conduct the conciliation conference and hearing on site? If so, will adequate facilities be available? Will the hearing be able to be observed and heard by the public?
7.	Is there any reason that the conciliation conference and hearing should not commence at 9.30am on site?
8.	Estimate of the length of the conciliation conference and hearing.
Applicant:	
Respondent:	
9.	Identify dates sought:
Applicant:	
Respondent:	

Schedule E

Usual directions at the first directions hearing for residential development appeals

1. Time and place of conciliation conference and hearing

(a) The proceedings are listed on [insert date usually within 6 weeks after the directions hearing] for a conciliation conference and hearing under s 34AA of the *Land and Environment Court Act 1979*;

(b) The conciliation conference is to commence on site at 9.30am. If the parties consider the site may be difficult to find, they are to file an agreed map showing its location two working days before the conciliation conference.

Note: The parties should ensure that appropriate facilities are available for that purpose, including a table and chairs and bathroom facilities. As any hearing will be open to the public, the venue must be adequate to ensure that the hearing will be able to be observed and heard by all persons attending.

2. Statement of facts and contentions in reply

The [applicant/respondent] is to file and serve any statement of facts and contentions in reply in accordance with Schedules B or C (as appropriate) of the Practice Note Class 1 Residential Development Appeals by [insert date 7 days after directions hearing]. This statement is not to repeat any facts not in dispute.

3. Preparation for and conduct of conciliation conference

(a) The parties are to participate, in good faith, in the conciliation conference (see s 34(1A) of the Court Act), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference.

(b) Any amended plans or additional information proposed by the applicant to be the subject of without prejudice discussions at the conciliation conference are to be provided to the respondent 14 days before the conciliation conference.

(c) The respondent is to provide to the applicant any response to the amended plans or additional information 7 days before the conciliation conference.

(d) Any documents proposed to be relied upon by a party for the purposes of without prejudice discussions at the conciliation conference may be lodged with the Court in a sealed envelope and marked for the attention of the Commissioner who is to preside over the conciliation conference. Such documents should not be filed and will not be recorded in the Court's records.

(e) A copy of any document so lodged is also to be provided, at the time of lodgment, to the other party to the proceedings with the notation that it has been brought into existence for the purposes of, and proposed to be relied upon by a party at, the conciliation conference.

(f) If no agreement of a kind referred to in s 34(3) of the Land and Environment Court Act is reached, the conciliation conference will be terminated and the proceedings will proceed to a hearing forthwith or, subject to the agreement of the parties, on the basis of what has occurred at the conciliation conference, in accordance with s 34AA(2)(b).

4. Expert evidence

(a) Under rr 31.19 and 31.20 of the Uniform Civil Procedure Rules 2005 ('UCPR'), the Court makes the following directions regarding expert evidence:

- [name of the expert witness] may prepare an individual expert's report on [specified issues];
- [the named experts] are to confer in relation to [specified issues] under UCPR r 31.24 and prepare a joint expert report;

- the individual expert's report of [named expert] is to be filed and served by [date];
- the joint expert report of [named experts] is to be filed and served by [date].

Note: The above directions may be duplicated for each area of expertise required.

(b) Unless the Court otherwise orders, expert evidence may not be adduced at the hearing otherwise than in accordance with the directions made by the Court in accordance with UCPR rr 31.19 and 31.20, including compliance with directions as to the time for service and filing of experts' reports and joint expert reports.

5. Experts' obligations

(a) Parties are to serve a copy of these directions, the statements of facts and contentions, Division 2 of Pt 31 of the Uniform Civil Procedure Rules, the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, and the Court policies on Joint Reports and on Conference of Expert Witnesses on all experts upon whose evidence they propose to rely within 3 business days of these orders being made, or, for a statement of facts and contentions (or reply) filed after the making of these orders, within 3 business days of them being filed or served.

(b) Experts are directed to give written notice to the Court and the party instructing them if for any reason they anticipate that they cannot comply with these directions. In that case, or if the experts have failed to comply with these directions, the parties will promptly list the matter before the Court for directions and give written notice to the other parties. Default without leave of the Court can result in the imposition of sanctions.

(c) Any written expert evidence is to include acknowledgement that the expert has read and agrees to be bound by the Expert Witness Code of Conduct.

6. Obligations for joint conference and report

(a) Experts are to ensure that a joint conference is a genuine dialogue between experts in a common effort to reach agreement with the other expert witness about the relevant facts and issues. Any joint report is to be a product of this genuine dialogue and is not to be a mere summary or compilation of the pre-existing positions of the experts.

(b) A joint report is to identify the experts involved in its preparation, the date of their joint conferences, the matters they agreed about, the matters they disagreed about and reasons for agreement and disagreement. A joint report should avoid repetition and be organised to facilitate a clear understanding of the final position of the experts about the matters in issue and the reasoning process they used to reach those positions. Each expert is to sign and date the joint report.

(c) Legal representatives are not to attend joint conferences of experts or be involved in the preparation of joint reports without the leave of the Court.

7. Restrictions on oral expert evidence

A party calling a witness may not, without the leave of the Court, lead evidence from the witness the substance of which is not included in a document served in accordance with the Court's directions.

8. Witnesses required for cross-examination

If any witness is required for cross-examination, notice is to be given at least seven days before the conciliation conference and hearing.

9. Objections to evidence

A party who proposes to object to any part of an affidavit, statement or report is to file and serve notice of its objections, including the grounds in support, at least seven days before the conciliation conference and hearing.

10. Bundle of documents

The respondent consent authority is to file and serve a bundle of documents by 7 days before the conciliation conference and hearing. The bundle is to contain copies of relevant environmental planning instruments, relevant extracts from development control plans and policies, and documents evidencing the lodgment, processing and determination of the application by the consent authority, including all submissions from objectors, and the decision of the consent authority but is not to otherwise include copies of any documents annexed to the residential development appeal. Unnecessary copying and duplication of documents is to be avoided. The bundle is to be subdivided into relevant divisions, paginated and have a table of contents.

11. Notice of objectors who will give evidence

The respondent consent authority is to file and serve a notice of objectors who wish to give evidence at the hearing, of whom the consent authority is aware, by 7 days before the conciliation conference and hearing. The notice is to identify the objector, their address, where they wish to give evidence (on site or in Court) and whether they made a written submission about the application (in which event, the notice is to provide the page number of that submission in the key bundle). If there is no submission, the respondent consent authority should, if possible, file and serve a short statement identifying the topics about which the objector wishes to give evidence.

12. Draft conditions of consent

(a) The respondent consent authority is to file and serve draft conditions of consent (in both hard copy and electronic form) by 14 days before the conciliation conference and hearing.

(b) The applicant for consent is to file and serve its draft conditions in response (in both hard copy and electronic form) by 7 days before the conciliation conference and hearing.

(c) Each party's draft conditions of consent are to identify any variance from the standard conditions of consent for residential development, including conditions which have been added, amended or deleted.

13. Non-compliance with directions and timetable

If any party fails to comply with a direction of the Court that some action be taken by a specified time, and the defaulting party is not able to take that action within two days of the specified time, the defaulting party is to:

(a) relist the matter before the Court within three days of the specified time; and

(b) provide to the Court on the relisting an affidavit explaining the non-compliance, the reason for the non-compliance and what action the party proposes to take and when the party proposes to take action to comply with the direction.

Note: The Court will usually order that the defaulting party pay the costs of the other party of and occasioned by the non-compliance and the relisting unless it appears to the Court that some other order should be made as to the whole or any part of the costs.

14. Liberty to re-list

The parties have liberty to restore on two working days' notice.

15. Concurrent evidence of experts

At the hearing the evidence of experts is to be given by way of concurrent evidence, unless the hearing Commissioner directs otherwise.

16. Submissions of parties

(a) The applicant is to file and serve an outline of submissions by 5 working days before the conciliation conference and hearing.

(b) The respondent is to file and serve an outline of submissions by 2 working days before the conciliation conference and hearing.

Schedule F

Usual directions on the appointment of a parties' single expert:

The Court orders:

1. The Court notes the agreement between the parties to engage [insert name] as a parties' single expert and that the parties have agreed the remuneration to be paid to that expert as being [insert details of remuneration].

   Or, failing agreement about the identity and/or remuneration of the parties' single expert:

1A. (a) The parties are to agree on a parties' single expert and their remuneration and are to notify the Court of the expert's name and that the expert's remuneration has been agreed by [insert date 7 days after the first directions hearing].

(b) Failing agreement, the parties are to file and serve the names, CVs and fee estimates of three appropriately qualified experts by [insert date 10 days after the first directions hearing]. The Court will make order 2 below in Chambers and notify the parties accordingly.

2. (a) The Court orders the parties to engage jointly [insert name] as a parties' single expert.

(b) The Court fixes the remuneration of the parties' single expert at [insert details of remuneration].

3. A parties' single expert is not to incur fees or disbursements additional to the remuneration agreed by the parties or fixed by the Court without written agreement of both parties or, absent such agreement, the leave of the Court.

4. The parties are to brief the parties' single expert with agreed instructions and an agreed bundle of documents by [insert date within 7 days of direction 2 being made].

5. The parties' single expert is to file and serve their expert report by [insert date within 6 weeks of direction 2 being made]. Without leave of the Court, the

parties' single expert is not to provide the parties with a preliminary expert report or preliminary opinion.

6. The parties' single expert is to comply with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, including the requirements for experts' reports.

7. If the Court has ordered that a parties' single expert address any issue, no expert report addressing the same issue other than the report of the parties' single expert may be relied upon at the hearing, without leave.

8. The parties' are not to provide a parties' single expert with any expert report brought into existence for the purpose of the proceedings addressing any matter the subject of instructions to the parties' single expert, without leave of the Court.

SCHEDULE G

Usual directions for separate determination of questions

The Court orders that:

1. Pursuant to r 28.2 of the Uniform Civil Procedure Rules 2005, the following question is to be determined separately from any other question in the proceedings:

   [insert separate question]

2. The parties are to file and serve any affidavits, reports or statements on which they wish to rely by [insert date within 14 days of the separation of the question].
3. The parties are to file and serve any affidavits, reports or statements in reply by [insert date within 28 days of the separation of the question].
4. The parties are to file an agreed bundle of documents by [insert date within 5 weeks of the separation of the question].
5. The party raising the question is to file and serve an outline of submissions by [insert date two working days before the hearing of the separate question].
6. The other party is to file and serve an outline of submissions by [insert date one working day before the hearing].
7. The question is listed for hearing in court on [insert date] at 10:00am.
8. Parties are to notify promptly the Court if there is any material slippage in the timetable.
9. The parties have liberty to restore on three working days' notice.